

Application No.: 10/025,037

REMARKS

Claims 1-25 are pending. No claims are amended in this communication.

35 U.S.C. § 103

The Examiner rejected claims 1-25 under 35 U.S.C. § 103(a) as being unpatentable over Gehrman et al. (U.S. Patent No. 4,518,696) in view of Desai et al. The Examiner identified Desai et al. as being U.S. Patent No. 4,867,696. Applicant presumes that the Examiner was referring to U.S. Patent No. 4,867,986, issued to Desai et al. on September 19, 1989. Applicant respectfully traverses the rejection.

The Office Action indicates that Gehrman discloses a composition comprised of liquid suspensions of various species of lactobacillus provided as a dispersion of cells in sunflower seed oil. However, as the Office Action notes, Gehrman does not teach the claimed limitation(s) of fish oil or antioxidants in combination with a vegetable oil. Rather, the Office Action relies upon the teachings of Desai to provide the claims limitations of fish oil and antioxidants, and further goes on to indicate that Desai may be combined with Gehrman to obviate all claims.

The first criteria to establish a *prima facie* case of obviousness is that there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to combine the reference teachings. MPEP 2142-2143. In re Vaack, 947 F.2d 488, 20USPQ 2d 1438 (Fed. Cir. 1991). Applicant submits that there is no motivation to combine the Desai reference with the Gehrman reference. In fact, the Gehrman reference explicitly teaches away from utilizing the elements of Desai because the Gehrman reference states that sunflower seed oil is preferably the only liquid ingredient of the medium. See Column 2, lines 61-63 of Gehrman. The combining of Desai, with its fish oil and antioxidants, with Gehrman would nullify the desired invention of Gehrman, i.e., a suspension medium having sunflower oil as its only liquid. As such, Applicant respectfully submits that a

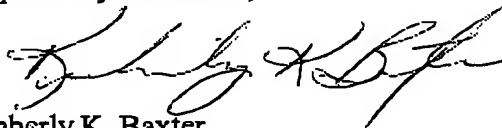
Application No.: 10/025,037

case for *prima facie* obviousness has not been met and requests that the rejection to all pending claims under 35 USC § 103(a) be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



Kimberly K. Baxter
Registration No. 40,504

Customer No. 24113
Patterson, Thuent, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-5750